United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 *and* Armstrong & Smith Construction *and* United Construction *and* Curt Williams Construction, Inc.

Orange County District Council of Carpenters, AFL-CIO *and* Myers & Sons, Inc. Cases 31-CB-3346, 31-CB-3347, 31-CB-3348, and 31-CB-3390

April 29, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 27, 1981, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Parties Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., filed exceptions and supporting briefs, and Respondents filed a brief in opposition to the exceptions of the General Counsel and the Charging Parties.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

This consolidated proceeding involves different charging party employers. Certain of the facts are common to all, and the relevant facts are set out below.

1. Charging Parties Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc.,[2] were signatories to similar short-form collective-bargaining agreements with Respondent United Brotherhood of Carpenters & Joiners of America, Local Union No. 743.[3] These documents were entitled "Memorandum Agreement[s]" and were dated July 1, 1977, and April 7 and 25, 1975, respectively. These memorandum agreements bound the parties to all those provisions of the successive Master Labor Agreements negotiated between the Southern California General Contractors and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, except those provisions specifically excluded in the memorandum agreements. These memorandum agreements were apparently executed during the term of the 1974-77 Master Labor Agreement, which was succeeded by the 1977-80 Master Labor Agreement in effect at the time of the hearing herein. Among the terms contained in the memorandum agreements was the following paragaph 8:

> This Memorandum Agreement shall remain in full force and effect until June 15, 1977, and shall continue from *year to year thereafter* unless either party shall give written notice to the other of a desire to change or cancel it at least sixty (60) days prior to June 15, 1977 *or June 15, of any succeeding year.* All notices given to the signatory parties to the Master Labor Agreement by the Unions shall constitute sufficient notice to the Contractor for the purpose of this paragraph. The Contractor and the Unions shall be bound by any renewals or extensions of the Master Labor Agreement and the Trust Agreement, or any new agreements unless an appropriate written notice is given to the other party at least sixty (60) days prior to June 15, 1977, *or any subsequent year* of their intent not to be bound by any new, renewed or extended Agreement. [Emphasis supplied.]

On March 20, 1979,[4] Local Union No. 743 was notified that United and Armstrong desired to terminate their agreements and to bargain for new agreements. On April 9, Local Union No. 743 was similarly notified that Curt Williams desired to terminate its agreement and to bargain for a new agreement. Local Union No. 743 acknowledged receipt of these notices of intent to terminate and requested that all further communications be directed to its bargaining agent, Southern California Conference of Carpenters, herein the Conference.

On May 4, the Employers forwarded letters to Local Union No. 743 and the Conference proposing to set aside the week of May 21 through 25 for the purpose of collective bargaining for new agreements. Thereafter, on May 21, the Employers notified the Conference that no response had been received to their earlier communication concerning the request for collective bargaining. The Employers further indicated that, in the absence of a response from the Unions within 7 days, the Employers would "make such unilateral modifications in wages, hours, and working conditions as shall be

[1] Party in Interest Southern California Conference of Carpenters also filed a letter joining in Respondents' brief.

Respondents filed a motion to consolidate the instant case with Cases 21-CA-17952 and 21-CB-6939. We find that consolidation would not effectuate the purposes of the Act. Thus, we note that separate hearings have already been conducted in this proceeding and the one in Cases 21-CA-17952 and 21-CB-6939, and that the proceeding in Cases 21-CA-17952 and 21-CB-6939 is not presently pending before the Board. Accordingly, we deny the motion to consolidate.

[2] Referred to herein as Armstrong, United, and Curt Williams, respectively, or as the Employers.

[3] Referred to herein as Local Union No. 743.

[4] All dates are in 1979 unless noted otherwise.

agreed to between the employees and the [Employers]."

Local Union No. 743 refused and continues to refuse to bargain collectively with the Employers about a new contract on the ground that the Employers' notices were untimely since they were given in a year prior to the expiration year of the effective Master Labor Agreement. The Union thus contends that the agreements with the Employers remained in full force and effect until June 15, 1980.

2. On March 8, 1973, Charging Party Myers & Sons, Inc.,[5] entered into a memorandum agreement with various unions, including Respondent Orange County District Council of Carpenters, AFL–CIO,[6] which contained termination provisions identical to those in the agreements signed by Armstrong, United, and Curt Williams, as set forth above, except that Myers' memorandum agreement referred to the year 1973 rather than 1977.

During a strike in the industry in 1974, Myers entered into an interim agreement with various unions in order to continue operating while the strike was in progress. By the terms of that agreement, the parties agreed to comply with all of the terms of the Master Labor Agreement executed between the Southern California General Contractors and the United Brotherhood of Carpenters and Joiners of America, AFL–CIO, except as expressly modified by the interim agreement. Section 8 of the interim agreement further provided that in the event that a new Master Labor Agreement were executed between the Southern California General Contractors and the United Brotherhood of Carpenters and Joiners of America, AFL–CIO, that agreement would automatically supersede and replace the interim agreement.[7] Thereafter, the new Master Labor Agreement, effective 1974–77, was executed and this agreement was succeeded by the 1977–80 Master Labor Agreement.

On March 27, Myers notified, *inter alia*, the District Council of its intent to terminate all existing agreements with it. On April 23, the District Council replied that the notice of intent to terminate was ineffective since it did not comply with the notice provisions of the effective agreement between the parties. Thereafter, the District Council declined Myers' specific request to enter into negotiations for a new agreement.

[5] Referred to herein as Myers.

[6] Referred to herein as the District Council.

[7] In pertinent part, sec. 8 of the interim agreement stated, "In the event the Unions and the [employer associations] . . . execute a Master Labor Agreement . . . then this Memorandum Agreement shall be automatically superseded and replaced by such Master Labor Agreement."

The Administrative Law Judge's Conclusions

The Administrative Law Judge framed the issue involving Armstrong, United, and Curt Williams as whether the language contained in paragraph 8 of their memorandum agreements permitted the parties to the agreements to give notice of intent to terminate on an annual basis or whether the agreements could be terminated, with timely notice, only in the year in which the underlying Master Labor Agreement expired. Interpreting the memorandum agreements, the Administrative Law Judge rejected the General Counsel's argument that, *inter alia*, the Employers' notices were timely because the language of paragraph 8 of the memorandum agreements expressly confers upon the Employers an annual option to terminate those agreements upon appropriate notice. In the Administrative Law Judge's opinion, paragraph 8 of the memorandum agreements, while inartfully drafted, was not intended to provide the parties with an annual option to terminate the memorandum agreements during the contract term of a current Master Labor Agreement. Rather, the Administrative Law Judge, interpreting the termination provisions of the memorandum agreement along with the termination provisions of the underlying Master Labor Agreement, determined that paragraph 8 permits the parties to terminate the memorandum agreements only by giving appropriate notice at least 60 days prior to the expiration date of the Master Labor Agreement. The Administrative Law Judge therefore found that the notices of termination given by Armstrong, United, and Curt Williams were not timely since they were given in a year prior to the expiration year of the underlying and controlling Master Labor Agreement. Accordingly, he concluded that Local Union No. 743 had not violated Section 8(b)(3) of the Act by refusing to accept these notices as valid terminations of the agreements with the Employers and by refusing to bargain with the Employers for new agreements.

With respect to Myers, the Administrative Law Judge initially indicated that he found it unnecessary to address the General Counsel's contention that the 1974 interim agreement reverted to the memorandum agreement upon execution of the 1974–77 Master Labor Agreement in view of his previous finding that employers could terminate the memorandum agreements only during the expiration year of the Master Labor Agreement. He then noted that, even assuming that the memorandum agreement remained effective between Myers and the District Council, on the basis of his analysis of the termination provisions of that agreement, he would nevertheless find that Myers' notice was

untimely. Then, relying on the language of section 8 of the interim agreement, the Administrative Law Judge decided that that agreement, in fact, had been superseded by both the 1974–77 and the 1977–80 Master Labor Agreements. He therefore found that Myers' termination was governed solely by the 1977–80 Master Labor Agreement—the most recent agreement. Based on the termination provisions of this latter agreement,[8] the Administrative Law Judge found that the notice of termination given by Myers in 1979 was untimely since it was given in a year prior to the expiration year of the effective Master Labor Agreement. Accordingly, he concluded that the District Council's refusal to accept this notice as a valid termination of its agreement with Myers and its refusal to bargain with Myers for a new contract did not violate Section 8(b)(3) of the Act.

We cannot agree with the Administrative Law Judge with respect to either of his complaint dismissals. Initially, we note that the resolution of the issue involved herein is not materially aided by prior cases involving short-form agreements which bind their signatories to comply with the provisions contained in collective-bargaining agreements to which they are not signatories. Thus, the Unions' contention that *Ted Hicks and Associates, Inc.*, 232 NLRB 712 (1977), controls the instant case is misplaced. In that case, the memorandum agreement did not contain an expiration date or express provision regarding its termination whereas the memorandum agreements in the instant case contain specific provisions for their terminations. Hence, we shall examine the pertinent provisions of the memorandum agreements—the only contracts to which the parties herein are signatories.

The express language of the termination provisions of the memorandum agreements refutes the contention of Respondents and the findings of the Administrative Law Judge that those agreements can be terminated only during the year in which the underlying Master Labor Agreement expires. Thus, by signing the memorandum agreements, Local Union No. 743 plainly agreed with Armstrong, United, and Curt Williams, in paragraph 8 thereof, that those agreements were effective until June 15, 1977, and continued "from *year to year thereafter*" and could be terminated "at least sixty (60) days prior to June 15, 1977 *or June 15, of any succeeding year* [emphasis supplied]." The parties further clearly assented to be bound by any renewals of the Master Labor Agreement unless notice was given at least "sixty (60) days prior to June 15, 1977, *or any subsequent year* [emphasis supplied]" of their intent not to be so bound. Nowhere in paragraph 8 of these memorandum agreements is there any reference to the termination provisions of the Master Labor Agreement. The District Council and Myers also entered into a clear memorandum agreement. Thus, as indicated above, Myers' memorandum agreement contained termination provisions identical to those in the memorandum agreements signed by Armstrong, United, and Curt Williams, except that Myers' agreement referred to the year 1973 rather than 1977.

Local Union No. 743 and the District Council urge that the termination provisions of the Master Labor Agreement must govern here since the memorandum agreements incorporate by reference the terms of the Master Labor Agreement except those terms specifically excluded by the memorandum agreements. In this regard, the Unions emphasize that the memorandum agreements specify certain exclusions and they contend that since the termination provisions of the Master Labor Agreement are not listed among the specified exclusions such provisions must necessarily be regarded as inclusions and as binding provisions between the parties.[9] We find this argument unpersuasive because, as indicated above, the memorandum agreements contain specific provisions for their termination and the parties thus implicitly rejected the termination provisions of the Master Labor Agreement upon agreeing to be bound by the specific termination provisions of the memorandum agreements. While the memorandum agreements do incorporate by reference many of the terms of the Master Labor Agreement, it does not follow that the specific and unqualified termination provisions of the memorandum agreements should be superseded and nullified by the termination provisions of the Master Labor Agreement. We can neither ignore such specific and unqualified language nor read in a contrary intent. Therefore, we find that the express language of the memorandum agreements, which permit termination thereof, upon timely notice, prior to the expiration year of the underlying Master Labor

[8] Art. 12 of that Agreement set forth the termination procedure to be followed:

> This Agreement shall be effective as of the first day of July, 1977 and shall remain in effect until the 15th day of June, 1980 and shall continue from year to year thereafter unless, either of the collective-bargaining representatives shall give written notice to the other of the desire to change, amend or terminate the agreement at least sixty (60) days prior to the 15th day of June, 1980 or the 15th day of June of any subsequent year . . . . The written notice of final termination shall provide that the Agreement shall be terminated on the date specified in such notice provided, however, the Agreement shall not terminate prior to July 1, 1980, or July of any subsequent year.

[9] The provisions of the Master Labor Agreement expressly excluded by the memorandum agreements relate to the grievance and arbitration procedure and portions of the fringe benefit contribution requirements.

Agreement, govern the cancellation procedures here.[10]

Further, although the termination provisions of the memorandum agreements are clear, there is another reason why the parties must be found to have intended an annual option to terminate those agreements. That reason is the Unions' own course of conduct. Thus, the General Counsel presented uncontroverted evidence that, during 1978 and 1979, the Unions had permitted other employers with whom they had memorandum agreements with language substantially identical to that contained in the termination provisions of the memorandum agreements at issue here to terminate those agreements prior to the expiration year of the underlying Master Labor Agreement. In view of such past practice, we find that the Unions cannot now deny that the memorandum agreements here are terminable prior to the expiration year of the underlying Master Labor Agreement.

We conclude that as Local Union No. 743 acknowledged having received the notices of intent to terminate from Armstrong, United, and Curt Williams more than 60 days prior to June 15, 1979, these notices were clearly timely and Local Union No. 743 therefore violated Section 8(b)(3) of the Act by refusing to accept these notices and by refusing to bargain with Armstrong, United, and Curt Williams for new agreements.

With respect to Myers, as noted above, the Administrative Law Judge stated that he found it unnecessary to determine whether the 1973 memorandum agreement remained effective between Myers and the District Council subsequent to the execution of the 1974–77 Master Labor Agreement and the coinciding dissolution of the July 16, 1974, interim agreement. We find that this memorandum agreement did remain effective between the parties. We reach this conclusion based upon the clear intent of the memorandum agreement. As previously indicated, the memorandum agreement is a separate contract between the Employer and the Union. It is the vehicle by which Myers, as an independent employer, and the District Council entered into a collective-bargaining relationship whereby they became bound to comply with the terms of a Master Labor Agreement negotiated and executed by certain unions and employer associations. Myers was neither a member of the employer associations nor a signatory to the Master Labor Agreement. Further, there were no provisions in the Master Labor Agreement whereby an employer who was not a signatory automatically became bound either to that Agreement or to a succeeding Master Labor Agreement. Therefore, Myers' relationship with the District Council was at all relevant times governed by the 1973 memorandum agreement and, in the absence of such an agreement, Myers would have had no obligation to comply with the terms of any current or succeeding Master Labor Agreement. We have found above, based on the express language of the memorandum agreements and the Unions' past practice, that those agreements are terminable, upon timely notice, prior to the expiration year of the Master Labor Agreement. Myers' March 27 notice to the District Council of its intent to terminate the bargaining agreement was timely since it was given more than 60 days prior to June 15, 1979. Accordingly, we find that the District Council's refusal to accept that notice and to enter into negotiations for a new agreement with Myers upon the latter's request constituted a refusal to bargain in violation of Section 8(b)(3) of the Act.

[10] The Unions alternatively contend that, even assuming the memorandum agreements are, in fact, terminable in a year prior to the expiration year of the underlying Master Labor Agreement, the Employers here nevertheless are still bound to comply with the provisions of the Master Labor Agreement for the full term of that Agreement because such was the intent of the parties. We reject this contention. The memorandum agreements were separate contracts between the Employers and the Unions and by signing these agreements the Employers neither became signatories to the underlying Master Labor Agreement nor thereby manifested an intent to become signatories.

CONCLUSIONS OF LAW

1. Armstrong & Smith Construction, United Construction, Curt Williams Construction, Inc., and Myers & Sons, Inc., are employers within the meaning of Section 2(2) of the Act and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, and Orange County District Council of Carpenters, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By memorandum agreements entered into by Respondent United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, with Charging Parties Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., dated July 1, 1977, and April 7 and 25, 1975, respectively, Respondent Local Union No. 743 adopted and was therefore bound by, *inter alia*, the provisions of paragraph 8 of those agreements which permit termination of those agreements subsequent to June 15, 1977, with appropriate notice, on a yearly basis.

4. By memorandum agreement entered into by Respondent Orange County District Council of Carpenters, AFL–CIO, with Charging Party Myers & Sons, Inc., dated March 8, 1973, Respondent District Council adopted and was there-

fore bound by, *inter alia*, the provisions of paragraph 8 of that agreement which permit termination thereof subsequent to June 15, 1973, with appropriate notice, on a yearly basis.

5. By refusing to accept the timely notices of termination of Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., as valid terminations of the parties' agreements and by refusing to bargain with the Employers, upon their demands, for new collective-bargaining agreements, Respondent United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, engaged in and is engaging in an unfair labor practice within the meaning of Section 8(b)(3) of the Act.

6. By refusing to accept the timely notice of termination of Myers & Sons, Inc., as a valid termination of the parties' agreement and by refusing to bargain with the Employer, upon its demand, for a new collective-bargaining agreement, Respondent Orange County District Council of Carpenters, AFL-CIO, engaged in and is engaging in an unfair labor practice within the meaning of Section 8(b)(3) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, has engaged in the unfair labor practice described above, we shall order it to cease and desist therefrom, to honor and abide by paragraph 8 of the memorandum agreements entered into with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., and to bargain, upon demand, with the Employers for new collective-bargaining agreements.

Having found that Respondent Orange County District Council of Carpenters, AFL-CIO, has engaged in the unfair labor practice described above, we shall order it to cease and desist therefrom, to honor and abide by paragraph 8 of the memorandum agreement entered into with Myers & Sons, Inc., and to bargain, upon demand, with the Employer for a new collective-bargaining agreement.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, Bakersfield, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., by failing and refusing to honor and abide by paragraph 8 of the memorandum agreements entered into with the Employers.

(b) Refusing to bargain collectively, upon request, with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., for new collective-bargaining agreements.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Honor and abide by paragraph 8 of the memorandum agreements entered into with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc.

(b) Upon the request of Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., bargain for new collective-bargaining agreements.

(c) Post at Respondent's business offices copies of the attached notice marked "Appendix A."[11] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director for Region 31 sufficient copies of the attached notice marked "Appendix A" for posting by Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., if willing, in conspicuous places, including all places where notices to employees are customarily posted.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

B. Respondent Orange County District Council of Carpenters, AFL-CIO, Orange, California, its officers, agents, and representatives, shall:

[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

1. Cease and desist from:

(a) Refusing to bargain collectively with Myers & Sons, Inc., by failing and refusing to honor and abide by paragraph 8 of the memorandum agreement entered into with the Employer.

(b) Refusing to bargain collectively, upon request, with Myers & Sons, Inc., for a new collective-bargaining agreement.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Honor and abide by paragraph 8 of the memorandum agreement entered into with Myers & Sons, Inc.

(b) Upon the request of Myers & Sons, Inc., bargain for a new collective-bargaining agreement.

(c) Post at Respondent's business offices copies of the attached notice marked "Appendix B."[12] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director for Region 31 sufficient copies of the attached notice marked "Appendix B" for posting by Myers & Sons, Inc., if willing, in conspicuous places, including all places where notices to employees are customarily posted.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[12] See fn. 11, *supra.*

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., by failing and refusing to honor and abide by paragraph 8 of the memorandum agreements entered into with them.

WE WILL NOT refuse to bargain collectively, upon request, with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., for new collective-bargaining agreements.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL bargain collectively with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., by honoring and abiding by paragraph 8 of the memorandum agreements entered into with them.

WE WILL bargain, upon request, with Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc., for new collective-bargaining agreements.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION NO. 743

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Myers & Sons, Inc., by failing and refusing to honor and abide by paragraph 8 of the memorandum agreement entered into with it.

WE WILL NOT refuse to bargain collectively upon request, with Myers & Sons, Inc., for a new collective-bargaining agreement.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL bargain collectively with Myers & Sons, Inc., by honoring and abiding by paragraph 8 of the memorandum agreement entered into with it.

WE WILL bargain, upon request, with Myers & Sons, Inc., for a new collective-bargaining agreement.

ORANGE COUNTY DISTRICT COUNCIL

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon charges filed on July 18, 1979,[1] in Cases 31-CB-3346, 31-CB-3347, and 31-CB-3348 by Armstrong & Smith Construction (Armstrong), United Construction (United), and Curt Williams Construction, Inc. (Curt Williams), respectively, and charges filed on August 20 in Case 31-CB-3390 by Meyers & Sons, Inc. (Myers), the Regional Director for Region 31 issued an order consolidating cases and a notice of hearing on October 11. The complaints in each case allege that Respondents United Brotherhood of Carpenters and Joiners of America, Local Union No. 743, and Orange County District Council of Carpenters, AFL-CIO (hereafter collectively called the Unions), violated Section 8(b)(3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* (hereafter called the Act). In essence, the complaints allege that the Unions and the District Council were parties to memorandum agreements with Armstrong, Curt Williams, United, and Myers (also collectively referred to herein as the Employers) binding them to certain terms of successive Master Labor Agreements with the Southern California Conference of Carpenters and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; the last of which was effective from July 1, 1977, to June 15, 1980. Further, that the Employers gave notice in 1979 of intent to terminate their agreements with the Unions and requested collective bargaining concerning a new agreement, and that the Unions have refused and continue to refuse to bargain collectively with the Employers.

The answer of the Unions admits certain allegations of the complaints, denies others, and specifically denies the commission of any unfair labor practices. By way of an affirmative defense, the Unions assert that the notices of terminations by the Employers were untimely and the collective-bargaining agreements with the Employers remain in full force and effect until June 15, 1980. Thus, the Unions assert that they were under no obligation to bargain with the Employers in 1979.

A hearing was held on this matter in Los Angeles, California, on July 10, 1980. All parties were represented and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues in controversy. Briefs were submitted by the parties and have been duly considered.

Upon the entire record in this case, including the stipulations agreed to by the parties at the hearing, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Armstrong & Smith Construction and United Construction have been at all times material herein partnerships, each with an office and principal place of business located in Bakersfield, California. Curt Williams Construction, Inc., and Myers & Sons, Inc., have been at all times material herein California corporations with an office and principal place of business located in Bakersfield, California, and Thousand Oaks, California, respectively. The Employers are contractors in the building and construction industry. In the course and conduct of their business operations, the Employers annually purchase and receive goods and services in excess of $50,000 directly from suppliers located within the State of California who in turn meet one of the Board's jurisdictional standards. Based on the above, I find, and the pleadings admit, that the Employers are, and have been at all times material herein, employers engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, Orange County District Council of Carpenters, AFL-CIO, and Southern California Conference of Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Armstrong & Smith Construction, United Construction, and Curt Williams Construction, Inc.*

On April 7, 1975, United and United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 (herein Local 743), entered into a short-form collective-bargaining agreement styled "memorandum agreement" covering the Employers' carpentry employees. (Jt. Exh. 27(b).) The bargaining unit for the represented employees was described as follows:

> All carpentry employees employed by the Employer; excluding all other employees, guards, and supervisors as defined in the Act.

On April 25, 1975, Curt Williams entered into a similar memorandum agreement with Local No. 743, as did Armstrong on July 1, 1977.[2]

By the provisions of the memorandum agreement, the Unions and the Employers were bound by all the terms of the Master Labor Agreement (MLA), except those specifically excluded in the memorandum agreement, negotiated between the Southern California General Contractors and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO. The MLA in effect at the time of the hearing herein was for the period of July 1, 1977, to June 15, 1980.

Among the terms contained in the memorandum agreement was the following provision:

> 8. This Memorandum Agreement shall remain in full force and effect until June 15, 1977, and shall continue from *year to year thereafter* unless either party shall give written notice to the other of a desire to change or cancel it at least sixty (60) days prior to *June 15, 1977, or June 15 of any succeeding year.* All notices given to these signatory parties to

[1] Unless otherwise indicated, all dates refer to the year 1979.

[2] See Jt. Exhs. 27(a) and 27(c).

> the Master Labor Agreement by the Unions shall constitute sufficient notice to the Contractor for the purpose of this paragraph. The Contractor and the Unions shall be bound by any renewals or extensions of the Master Labor Agreement and the Trust Agreements, or any new agreements unless an appropriate written notice is given to the other party at least sixty (60) days prior to June 15, 1977, *or any subsequent year*, of their intent not to be bound by any new, renewed or extended Agreement. [Emphasis supplied.]

On March 20, Sierra Employers Association, Inc. (Sierra), acting as the designated collective-bargaining agent for Armstrong and United, notified Local 743, in writing, of the Employers' desire to terminate their agreements with the Union and requested that Local 743 bargain with it for a new agreement. (Jt. Exh. 1.) On April 9, Sierra, again acting on behalf of Curt Williams, notified the Union in writing that Williams desired to terminate its agreement with the Union and requested bargaining for a new agreement. (Jt. Exh. 9.) Local 743 acknowledged receipt of the notices of intent to terminate from the Employers and requested that any further communication be directed to Southern California Conference of Carpenters, which was its designated bargaining agent. (Jt. Exhs. 3 and 15.)

On May 4, Sierra, on behalf of the Employers, sent letters to Local 743 and the Southern California Conference of Carpenters proposing to set aside the week of May 21 through 25 for the purposes of collective bargaining for a new agreement. (Jt. Exhs. 4, 7, and 16.) On May 21, Sierra again wrote to the Southern California Conference of Carpenters indicating that no response had been received to its earlier communications notifying the Unions of the Employers' intent to terminate the current agreement and bargain for a new one. Sierra stated that, in the absence of a response from the Unions within 7 days, the Employers would "make such unilateral modifications in wages, hours, and working conditions as shall be agreed to between the employees and the [Employers]." (Jt. Exhs. 5, 8, and 10.)

The Unions refused and continue to refuse to bargain collectively with the Employers on the ground that their notification of termination was untimely and the agreements with the Employers remained in full force and effect until June 15, 1980.

B. *Myers & Sons, Inc.*

On March 8, 1973, Myers entered a memorandum agreement with Local Union 844 of the Carpenters. Although Local 844 was signatory to the agreement, the contract covered that local union, the Los Angeles County District Council of Carpenters, Orange County District Council of Carpenters, Ventura County District Council of Carpenters, United Brotherhood of Carpenters Affiliated District Councils, and local unions in the 11 southern California counties. (Jt. Exh. 28.)[3]

On July 16, 1974, during a strike in the industry, Myers entered into an interim agreement with the Unions in order to continue working while the strike was in progress.[4] By the terms of this document, the parties agreed to comply with all of the terms of the Master Labor Agreement negotiated between the Southern California General Contractors and the United Brotherhood of Carpenters & Joiners of America, except as expressly modified by the interim agreement. (Jt. Exh. 30.) The interim agreement also provided that in the event the Unions and the Employer Associations executed a new Master Labor Agreement, it would automatically supersede and replace the interim agreement. A new Master Labor Agreement was executed on July 27, 1974, and it was succeeded by the 1977–1980 agreement.

On March 27, Myers, through its attorney, notified the Unions in writing of its intent to terminate all existing agreements with them. (Jt. Exh. 20.) On April 23, Orange County District Council, on behalf of the Unions, wrote Myers, stating the notice of intent to terminate was ineffective because it did not comply with the notice provisions of the agreement in effect between the parties, nor with Federal law. (Jt. Exh. 21.) Myers then wrote the Unions on August 2 demanding that the Unions either agree to bargain with it for a new agreement or disclaim interest in further representation of Myers' employees. (Jt. Exh. 25.) Orange County District Council responded on August 14 declining to enter into negotiations with Myers for a new agreement. (Jt. Exh. 26.)

C. *Evidence of Termination by Other Employers*

The General Counsel subpenaed records from the Union purporting to show that other employers had terminated their collective-bargaining relationship with the Unions in mid-term. The General Counsel stated on the record that while the documents produced pursuant to her subpenas were inadequate or incomplete, she did not propose to seek subpena enforcement. Instead, she accepted a listing of Employers, supplied by the Unions, who terminated their agreements with the Unions sometime in June 1978.[5] Other than the names, however, there is no supporting evidence to indicate how or why these employers terminated their bargaining relationship with the Unions; e.g., whether they discontinued their business operations or whether the Unions no longer claimed to represent their employees.

In addition, the General Counsel put into evidence a series of letters from several employers seeking to terminate their relationship with the Union in 1978, in mid-term of agreements in existence. In each instance, the Southern California Conference of Carpenters, as the bargaining agent for the Unions, offered to meet and ne-

[3] This was an earlier version of the agreements signed by the other Employers. The termination provision, however, was identically worded except that the agreement signed by Myers referred to the year 1973 rather than 1977.

[4] The parties stipulated that while the agreement signed by Myers was styled "Memorandum Agreement," it was customarily referred to in the industry as an "Interim Agreement."

[5] This list is designated in the record as G.C. Exh. 2 and is shown as a "withdrawn" exhibit. This notation by the court reporter is inaccurate as indicated by the official transcript. Therefore, (G.C. Exh. 2) is hereby a part of the exhibits admitted into evidence in this case.

gotiate with these particular employers. (See G.C. Exhs. 3, 4, and 5).

Concluding Findings

The core issue to be addressed here is whether the language contained in section 8 of the memorandum agreement permits either party to give notice of intent to terminate on an annual basis or whether the agreement can only be terminated, with timely notice, in the year the underlying Master Labor Agreement expires. This is solely a matter of contract interpretation.

The Unions argue that since the parties have stipulated that the memorandum agreement incorporates by reference the terms of the Master Labor Agreement, except those provisions specifically excluded, the purported termination of the memorandum agreement cannot take effect until the expiration date of the Master Labor Agreement. In this case it would be June 15, 1980. The Unions contend that since the memorandum agreement did not specifically exclude the termination provisions set forth in the Master Labor Agreement, the parties were bound to the entire contract term of the underlying Master Labor Agreement. The Unions also argue that even if the Employers could terminate the memorandum agreements on an annual basis, they would nevertheless be bound to the full term of the Master Labor Agreement because such was the intent of the parties.

Regarding the language of section 8 of the memorandum agreement which states that it will continue from "year to year" unless appropriate notice is given prior to June 15, 1977, or June 15 of "any succeeding year," the Unions contend this refers to a situation in which there is no new or extended Master Labor Agreement; in which event there would be no limitation on the right of the parties to terminate. However, since there is a Master Labor Agreement which does not expire until June 15, 1980, it is argued that the language in section 8 of the memorandum agreement refers to succeeding years in which the Employer has a right to terminate.

The General Counsel argues that the notices given by the Employers were timely since the language of section 8 confers upon the Employers an annual option to terminate the agreements, upon appropriate notice. In addition, the General Counsel argues that the language contained in section 8 of the memorandum agreement is at best ambiguous and, as such, must be interpreted against its drafter—in this case the Unions. Finally, the General Counsel contends that the willingness of the Unions (Local 743 and the Southern California Conference of Carpenters) to honor the midterm terminations of the memorandum agreements by certain Employers in 1978 and 1979 is evidence that the parties intended to consider the agreements terminable on an annual basis.

In my judgment, by agreeing to be bound by "any renewals or extensions of the Master Labor Agreement . . . or any new agreements" negotiated by the Employer associations and the Unions, the parties manifested an intent to abide by the terms of the current Master Labor Agreement as well as the results of all future negotiations between the signatories to the Master Labor Agreement, absent proper notice to terminate 60 days prior to the expiration date of the Master Labor Agreement. In arriving at this conclusion, I am not unmindful of but do not rely on the Board's decision in *Ted Hicks and Associates, Inc.*, 232 NLRB 712 (1977), which the Unions assert controls the results here and the General Counsel deems inapposite.

In *Ted Hicks*, the employer signed a memorandum agreement in 1974 binding it to a March 1969 agreement negotiated between the Union and a local chapter of the Associated General Contractors (AGC), as well as to "any modifications, extensions or renewals thereof." At the time the employer signed the memorandum agreement, the Union and the AGC negotiated a new contract effective May 1, 1974, to April 30, 1976. The 1969 agreement stated it would remain in effect until March 31, 1972, "and from year to year thereafter," absent notice to terminate at least 90 days prior to any anniversary date. The 1974–76 agreement provided that it would remain in effect until April 30, 1976, and "from year to year thereafter, subject to termination at the expiration of any such contract year upon notice . . . at least 90 days prior to the expiration of such contract year." The Union there gave timely notice to the AGC to negotiate a new agreement in 1976 and the parties did so. The employer refused to abide by the 1976 agreement. The Board held that the employer, by signing the memorandum agreement, had "expressed an intent to be bound by the results of all future negotiations between the Union and the AGC," and in the absence of proper notice to the contrary was bound to the new agreement. *Id.* at 713. In so holding, the Board noted that the memorandum agreement did not contain any provision for an expiration date. Since the memorandum agreement incorporated the provisions of the 1969 and successor agreements modifying it, the Board held the employer could have effectively terminated the memorandum agreement by giving appropriate notice pursuant to the provisions of the underlying agreement. *Id.* at 714, fn. 5.

Unlike the situation in *Ted Hicks*, however, the memorandum agreements in the instant cases contained specific provisions for their termination. Section 8 provided that the memorandum agreement would remain in effect June 15, 1977, and "continue from year to year thereafter," absent appropriate notice to the contrary at least 60 days prior to June 15, 1977, or June 15 of any succeeding year." The provisions of this same section of the memorandum agreement also bound the Employers and the Unions to any renewals or extensions of the Master Labor Agreement, or any new agreements negotiated by the parties signatory to the Master Labor Agreement, unless notice to terminate was given at least 60 days prior to June 15, 1977, or any sebsequent year. Thus, the issue here is not whether the Employers could terminate the agreement without giving any notice at all, as in *Ted Hicks*, but rather whether the notices were timely under the terms of the memorandum agreement. I find that on this point *Ted Hicks* does not offer any assistance.

I do find, however, that the provisions governing termination of the memorandum agreement were intended to and must be read as they apply not only to the memorandum agreement, but also to the underlying Master Labor Agreement; the terms of which, *including its ter-*

mination provisions, were incorporated by the memorandum agreement.[6] When considered in this context it becomes evident that section 8 of the memorandum agreement, no matter how inartfully drafted, was not intended to provide the parties with annual option to terminate the memorandum agreement, upon appropriate notice, during the contract term of a current Master Labor Agreement. Rather, it permits the parties to terminate their agreement by giving appropriate notice at least 60 days prior to *the expiration date of the Master Labor Agreement*. Thus, I find the phrases "year to year thereafter" and "or June 15 of any succeeding year" refer to years in which there is no renewed, extended, or new Master Labor Agreement in existence. In this latter event, the provisions of Section 8 of the memorandum agreement would cause that agreement to renew itself on a year-to-year basis unless either party gave timely notice to the contrary prior to June 15 of any succeeding year. To hold otherwise would, in my judgment, ignore the efficacy of the terms of the Master Labor Agreement, including the termination provisions, which were incorporated in the memorandum agreement.

Therefore, while I find the provisions of section 8 of the memorandum agreement to be deficient in terms of draftsmanship, I do not find this section to be ambiguous as contended by the General Counsel. Nor do I find that the evidence supports the argument that the Unions intended to treat Section 8 of the memorandum agreement as permitting Employers to terminate their contracts with the Unions prior to the expiration year of the existing Master Labor Agreement. The evidence introduced by the General Counsel showing that a number of Employers had canceled their contracts with the Union in the years 1978 and 1979 was, by the General Counsel's own admission, limited and incomplete. Furthermore, there was no supporting evidence to indicate the reasons why these particular agreements were terminated; thereby opening to speculation the countless number of circumstances, other than that urged by the General Counsel, that might have resulted in these contract terminations.

With regard to the case involving Myers & Sons, the General Counsel argues that the interim agreement was for a limited purpose (to allow Myers to continue its operations during the 1974 strike) and that upon the signing of the 1974–77 Master Labor Agreement, Myers' relationship with the Unions was governed by the memorandum agreement signed in 1973. Having found that absent timely notice during the expiration year the Master Labor Agreement an employer cannot terminate the memorandum agreement, I do not deem it necessary to address the issue of whether the interim agreement signed by Myers reverted to the memorandum agreement in 1974

Section 8 of the interim agreement executed by Myers in 1974 specifically provided:

> In the event the Unions and the Associated General Contractors of America . . . and the Building Industry Association of California execute a Master Labor Agreement . . . *then this Memorandum Agreement shall be automatically superseded and replaced by such Master Labor Agreement* and the Contractor and the Unions agree to accept all of the terms and conditions of such Master Labor Agreement effective the day such Master Labor Agreement is entered into by the Unions and the above Contractors' associations. [Emphasis supplied.]

The General Counsel concedes that the interim agreement signed by Myers dissolved in its entirety into the 1974–77 and 1977–80 Master Labor Agreements. Article 12 of the latest Master Labor Agreement specifically set forth the termination procedure to be followed:

> This Agreement shall be effective as of the first day of July, 1977 and shall remain in effect until the 15th day of June, 1980 and shall continue from year to year thereafter unless, either of the collective-bargaining representatives shall give written notice to the other of the desire to change, amend or terminate the agreement at least sixty (60) days prior to the 15th day of June, 1980 or the 15th day of June of any subsequent year. . . . The written notice of final termination shall provide that the Agreement shall be terminated on the date specified in such notice provided, however, the Agreement shall not terminate prior to July 1, 1980, or July of any subsequent year.

Therefore, it is evident that the notice of termination given by Myers in 1979 did not comport with the termination provisions of the Master Labor Agreement by which he was bound. See *Ted Hicks, supra; V M Construction Co., Inc.*, 241 NLRB 584 (1979); *Quad C Corporation and Associated General Contractors of California*, 246 NLRB 463 (1979). But even if I were to find, as urged by the General Counsel, that the 1973 memorandum agreement was the effective agreement between Myers and the Union, on the basis of my analysis of the termination provisions of that agreement, I would nevertheless find that Myers' notice was untimely and ineffective.

In sum, I find the notices of termination of the memorandum agreement given by Armstrong & Smith, United, Curt Williams, and Myers were not timely in that they were given in a year prior to the expiration year of the underlying and controlling Master Labor Agreement. Accordingly, I find that the Unions were under no duty to accept these notices as valid termination of their agreements with the Employers and by refusing to do so, were under no lawful obligation to bargain with the Employers for a new agreement. On the basis of the above, I find that the complaints herein must be dismissed in their entirety.

CONCLUSIONS OF LAW

1. Armstrong & Smith Construction, United Construction, Curt Williams Construction, Inc., and Myers & Sons, Inc. are employers within the meaning of Section

[6] The provisions of the Master Labor Agreement specifically excluded by the memorandum agreement related to the grievance and arbitration procedure and portions of the fringe benefit contribution requirements.

2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Brotherhood of Carpenters & Joiners of America, Local Union No. 743, AFL-CIO, Orange County District County of Carpenters, AFL-CIO and Southern California Conference of Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent labor organizations have not engaged in unfair labor practices within the meaning of Section 8(b)(3) when they refused to accept the untimely notices of termination given by the Employers and bargain for a new collective-bargaining agreement.

[Recommended Order for dismissal omitted from publication.]